

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN MICHAEL BROOKS,

Petitioner,

v.

JACK WARNER.

Respondent.

Case No. 3:22-cv-05486-JLR-TLF

**ORDER DIRECTING PETITIONER
TO FILE COMPLETE PROPOSED
AMENDED PETITION AND RE-
NOTING MOTION TO LIFT STAY
AND AMEND PETITION**

The District Court has referred this 28 U.S.C. § 2254 action to United States Magistrate Judge Theresa L. Fricke. Currently before the Court is petitioner John Michael Brooks' motion to lift stay and for leave to file an amended petition for writ of habeas corpus. Dkt. 37.

On July 1, 2022, Petitioner signed his petition for writ of habeas corpus under 28 U.S.C. § 2254. Petitioner challenges his custody under a Cowlitz County Superior Court judgment and sentence. Dkts. 1-1, 8. On July 29, 2022, the Court issued an order to show cause advising petitioner that his petition appeared to be “mixed” – presenting both exhausted and unexhausted claims – and directing petitioner to notify the Court whether he wished to: (1) dismiss the mixed petition without prejudice, allowing him to present his unexhausted claim in state court and then return to federal court to file a new habeas petition containing all of his claims; (2) stay the mixed petition to allow the petitioner to present his unexhausted claims to the state court and then return to the

ORDER DIRECTING PETITIONER TO FILE
COMPLETE PROPOSED AMENDED PETITION AND
RE-NOTING MOTION TO LIFT STAY AND AMEND
PETITION - 1

1 federal court for review of his perfected petition; or (3) delete the unexhausted claim and
2 proceed with the remaining exhausted claims. Dkt. 4. On August 3, 2022, petitioner filed
3 a response requesting that the action be stayed. Dkt. 5.

4 The Court directed service of the petition and the motion to stay and directed the
5 respondent to respond only to the petitioner's motion to stay. Dkt. 10. On September 29,
6 2022, the respondent filed a response agreeing to a stay of the action. Dkt. 16. On
7 December 12, 2022, the Court issued an order granting the motion to stay and abey
8 proceedings. Dkt. 17.

9 Petitioner has now filed the pending motion requesting that the Court lift the stay
10 and grant him leave to file an amended petition to include, it appears, his previously
11 unexhausted claim. Dkt. 37. On October 2, 2024, respondent filed a response stating
12 they do not oppose petitioner's request to lift the stay or his request to amend the
13 petition but do request 45 days to respond to an amended petition. *Id.*

14 DISCUSSION

15 The rules governing relief under 28 U.S.C. § 2254 require that the petition
16 "specify all the grounds for relief available to the petitioner" and "state the facts
17 supporting each ground[.]" Rule 2, U.S.C. foll. § 2254.

18 Western District of Washington Local Civil Rule ("LCR") 15 provides, in relevant
19 part:

20 A party who moves for leave to amend a pleading must attach a copy of the
21 proposed amended pleading as an exhibit to the motion. The party must indicate
22 on the proposed amended pleading how it differs from the pleading that it
amends by bracketing or striking through the text to be deleted and underlining or
highlighting the text to be added. The proposed amended pleading must not
incorporate by reference any part of the preceding pleading, including exhibits.

23 LCR 15.

24
25 ORDER DIRECTING PETITIONER TO FILE
COMPLETE PROPOSED AMENDED PETITION AND
RE-NOTING MOTION TO LIFT STAY AND AMEND
PETITION - 2

1 Here, petitioner has failed to include a *complete* proposed amended petition with
2 his motion to amend in accordance with LCR 15 and Rule 2, U.S.C. foll. § 2254.
3 However, as respondent does not oppose the motion to amend based upon the claim,
4 arguments, and supporting documents petitioner indicates he wishes to add, the Court
5 hereby ORDERS:

6 (1) On or before **October 23, 2024**, petitioner is directed to file a complete proposed
7 amended petition including *all* of the claims he intends to pursue in this action.

8 Petitioner is advised that the amended petition will act as a complete replacement
9 for his original petition, not as a supplement, and should therefore not incorporate
10 his prior pleadings by reference.

11 (2) On or before **November 6, 2024**, respondent may file a supplemental response to
12 the petitioner's submission of the proposed amended petition if they deem
13 appropriate. If respondent does not file a supplemental response, the Court will rely
14 on the previously filed response.

15 (3) The Clerk is directed to re-note the motion to lift the stay and to amend (Dkt. 37) to
16 **November 6, 2024**. The Clerk is further directed to provide petitioner the appropriate
17 forms for filing an amended § 2254 petition as well as a copy of the original petition
18 (Dkt. 8) and a copy of petitioner's motion to lift the stay and amend (Dkt. 37). The
19 Clerk is directed to provide a copy of this order to petitioner and counsel for
20 respondent.

21 Dated this 10th day of October, 2024.

22 
23

24 Theresa L. Fricke
United States Magistrate Judge

25 ORDER DIRECTING PETITIONER TO FILE
COMPLETE PROPOSED AMENDED PETITION AND
RE-NOTING MOTION TO LIFT STAY AND AMEND
PETITION - 3